

Senate Bill No. 1169

CHAPTER 280

An act to amend Sections 49430, 49430.5, 49430.7, 49431, 49431.2, 49431.5, 49431.7, and 49432 of the Education Code, relating to pupil nutrition.

[Approved by Governor September 9, 2016. Filed with
Secretary of State September 9, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1169, McGuire. Pupil nutrition: competitive food service and standards.

(1) Existing federal law establishes nutritional standards for all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to pupils on the school campus during the schoolday.

Existing state law establishes nutritional standards for all food and beverages sold or served to pupils in elementary, middle, and high school.

This bill would enact the Healthy Food, Healthy Student Act to update state law regarding school nutritional standards to conform to the federal standards. To the extent these changes would impose new duties on school districts and county offices of education, the bill would impose a state-mandated local program.

(2) Existing law requires every public school to post the school district's nutrition and physical activity policies in public view within all school cafeterias or other central eating areas.

This bill would, instead, require every public school to inform the public about the content of the school's local school wellness policy, thereby imposing a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Healthy Food, Healthy Student Act.

SEC. 2. Section 49430 of the Education Code is amended to read:

49430. As used in this article, the following terms have the following meanings:

(a) “Added sweetener” means an additive other than 100 percent fruit juice that enhances the sweetness of a beverage.

(b) “Combination foods” means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein, or grains.

(c) “Competitive foods” means all food and beverages other than meals reimbursed under programs authorized by the federal Richard B. Russell National School Lunch Act (Public Law 113-79) and the federal Child Nutrition Act of 1966 (42 U.S.C. Sec. 1771 et seq.) available for sale to pupils on the school campus during the schoolday.

(d) “Deep fried” means a food item that is cooked by total submersion in oil or fat.

(e) “Elementary school” means a school operated and maintained by a school district or county office of education that maintains any grade from kindergarten to grade 6, inclusive, but no grade higher than grade 6.

(f) “Entrée” means a food that is generally regarded as being the primary food in a meal, and shall include, but not be limited to, sandwiches, burritos, pasta, and pizza.

(g) “Flash fried” means a food item that is quickly fried on both sides in oil with a temperature of 400 degrees Fahrenheit or higher.

(h) “High school” means a school operated and maintained by a school district or county office of education maintaining any of grades 9 to 12, inclusive.

(i) “Middle school” means a school operated and maintained by a school district or county office of education that maintains grade 7 or 8, grades 7 to 9, inclusive, or grades 7 to 10, inclusive.

(j) “Par fried” means a food item that is fried to reach an internal temperature of 160 degrees Fahrenheit then it is cooled to room temperature so that it may be refrigerated or frozen for future frying.

(k) “School campus” means all areas of the property under the jurisdiction of the school that are accessible to pupils during the schoolday.

(l) “Schoolday” means the period from the midnight before to 30 minutes after the end of the official schoolday.

(m) “Snack” means a food that is generally regarded as supplementing a meal, including, but not limited to, chips, crackers, yogurt, cheese, nuts, seeds, fruit, or vegetables.

(n) “Sold” means the exchange of food or beverages for money, coupons, vouchers, or order forms when any part of the exchange occurs on a school campus.

SEC. 3. Section 49430.5 of the Education Code is amended to read:

49430.5. (a) The reimbursement a school receives for free and reduced-price meals sold or served to pupils in elementary, middle, or high schools included within a school district, charter school, or county office of education shall be twenty-two and seventy-one hundredths cents (\$0.2271) per meal, and, for meals served in child care centers and homes, the reimbursement shall be sixteen and ninety-one hundredths cents (\$0.1691) per meal.

(b) To qualify for the reimbursement for free and reduced-price meals provided to pupils in elementary, middle, or high schools, a school shall follow the United States Department of Agriculture meal pattern.

(c) The reimbursement rates set forth in this section shall be adjusted annually for increases in cost of living in the same manner set forth in Section 42238.1.

SEC. 4. Section 49430.7 of the Education Code is amended to read:

49430.7. (a) For purposes of this section, the following terms have the following meanings:

(1) “Child development program” means a program operated pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1.

(2) “School” means a school operated and maintained by a school district or county office of education, or a charter school.

(3) “School district” means a school district, charter school, or county office of education.

(b) As a condition of receipt of funds pursuant to Section 49430.5, commencing with the 2007–08 fiscal year, for meals and food items sold as part of the free and reduced-price meal programs, a school or school district shall comply with all of the following requirements and prohibitions:

(1) Follow the United States Department of Agriculture meal pattern.

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school or school district.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer’s documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat that is prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, and lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this paragraph include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils, typically liquid at room temperature and are known for their positive cardiovascular benefit.

(c) For meals and food items sold as part of the free and reduced-price meal programs, a child development program is encouraged to comply with all of the following guidelines:

(1) Meet developmentally and programmatically appropriate meal pattern and the United States Department of Agriculture meal pattern.

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school, school district, or child development program.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, and lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this provision include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils, typically liquid at room temperature and are known for their positive cardiovascular benefit.

(d) As a condition of receipt of funds pursuant to Section 49430.5, schools and school districts shall provide the department with an annual certification of compliance with the provisions of this section.

(e) This section shall become operative only upon an appropriation for its purposes in the annual Budget Act or another statute.

SEC. 5. Section 49431 of the Education Code is amended to read:

49431. (a) From the midnight before to 30 minutes after the end of the official schoolday, at each elementary school, the only competitive foods that may be sold to a pupil are fruit, vegetable, dairy, protein, or whole grain rich food items; foods with a fruit, vegetable, dairy, protein, or whole grain item as its first ingredient; or combination foods containing at least one-quarter cup of fruit or vegetable that meets the following standards:

(1) Not more than 35 percent of its total calories shall be from fat. This paragraph shall not apply to individually sold portions of nuts, nut butters, seeds, seed butters, reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, fruits, vegetables that have not been deep fried, seafood, or a dried fruit and nut and seed combination.

(2) Less than 10 percent of its total calories shall be from saturated fat. This paragraph shall not apply to reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.

(3) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar. This paragraph shall

not apply to fruits, vegetables that have not been deep fried, or a dried fruit and nut and seed combination.

(4) Contains less than 0.5 grams of trans fat per serving.

(5) Contains not more than 200 milligrams of sodium per item, package, or container sold to a pupil.

(6) Contains not more than 200 calories per individual food item.

(b) An elementary school may permit the sale of food items that do not comply with subdivision (a) as part of a school fundraising event in either of the following circumstances:

(1) The sale of those items takes place off of and away from school premises.

(2) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(c) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section and Section 49431.5.

SEC. 6. Section 49431.2 of the Education Code is amended to read:

49431.2. (a) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, the only competitive snack foods that may be sold to a pupil are fruit, vegetable, dairy, protein, or whole grain rich food items; foods with a fruit, vegetable, dairy, protein, or whole grain item as its first ingredient; or combination foods containing at least one-quarter cup of fruit or vegetable that meet all of the following standards:

(1) Not more than 35 percent of its total calories shall be from fat. This paragraph does not apply to the sale of nuts, nut butters, seeds, seed butters, reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, fruits, vegetables that have not been deep fried, seafood, or a dried fruit and nut and seed combination.

(2) Less than 10 percent of its total calories shall be from saturated fat. This paragraph shall not apply to reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.

(3) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugars. This paragraph shall not apply to the sale of fruits, vegetables that have not been deep fried, or a dried fruit and nut and seed combination.

(4) Contains less than 0.5 grams of trans fat per serving.

(5) Contains not more than 200 milligrams of sodium per item, package, or container sold to a pupil.

(6) Contains not more than 200 calories per individual food item.

(b) (1) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, a competitive entrée sold by the district food service department the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu shall meet the following standards:

(A) Contains not more than 400 calories per entrée item.

- (B) Not more than 35 percent of its total calories shall be from fat.
- (C) Contains less than 0.5 grams trans fat per serving.
- (D) Is offered in the same or smaller portion sizes as in the federal National School Lunch Program or federal School Breakfast Program.

(2) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, a competitive entrée sold by the district food service department but not the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu, or a competitive entrée sold by any other entity, shall meet the following standards:

- (A) Not more than 35 percent of its total calories shall be from fat.
- (B) Less than 10 percent of its calories shall be from saturated fat.
- (C) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar.
- (D) Contains less than 0.5 grams of trans fat per serving.
- (E) Contains not more than 480 milligrams of sodium.
- (F) Contains not more than 350 calories.

(c) A middle school or high school may permit the sale of food items that do not comply with subdivision (a) or (b) in any of the following circumstances:

(1) The sale of those items takes place off of and away from school premises.

(2) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(d) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section.

SEC. 7. Section 49431.5 of the Education Code is amended to read:

49431.5. (a) (1) From the midnight before to 30 minutes after the end of the official schoolday, at each elementary or middle school, the only competitive beverages that may be sold to a pupil are the following:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(C) Plain water or plain carbonated water.

(D) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, and other similar nondairy milk in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(E) A beverage shall not contain caffeine with the exception of trace amounts of naturally occurring caffeine substances.

(2) An elementary school or middle school may permit the sale of beverages that do not comply with paragraph (1) as part of a school fundraising event in either of the following circumstances:

(A) The sale of those items takes place off and away from the premises of the school.

(B) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(3) From the midnight before to 30 minutes after the end of the official schoolday, at each high school, the only competitive beverages that may be sold to a pupil are the following:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 12 fluid ounces.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 12 fluid ounces.

(C) Plain water or plain carbonated water.

(D) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, and other similar nondairy milk in a maximum serving size of 12 fluid ounces.

(E) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.

(F) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces.

(G) Electrolyte replacement beverages that are labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.

(H) Electrolyte replacement beverages that are labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces.

(I) Beverages labeled or commonly referred to as sodas, colas, or soft drinks are not allowed.

(J) A beverage shall not contain caffeine with the exception of trace amounts of naturally occurring caffeine substances.

(4) A high school may permit the sale of beverages that do not comply with paragraph (3) as part of a school event if the sale of those items meets either of the following criteria:

(A) The sale of those items takes place off and away from the premises of the school.

(B) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(b) It is the intent of the Legislature that the governing board of a school district annually review its compliance with this section.

(c) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 of Division 2, compliance with this section may not be waived.

SEC. 8. Section 49431.7 of the Education Code is amended to read:

49431.7. (a) From the midnight before to 30 minutes after the end of the official schoolday, a school or school district shall not sell to pupils enrolled in kindergarten, or any of grades 1 to 12, inclusive, food containing artificial trans fat, as defined in subdivision (b).

(b) For purposes of this section, a food contains artificial trans fat if a food contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams of trans fat per serving.

(c) This section shall not apply to food provided as part of a United States Department of Agriculture meal program.

SEC. 9. Section 49432 of the Education Code is amended to read:

49432. Every public school may post a summary of nutrition and physical activity laws and regulations, and shall inform the public about the content of the school's local school wellness policy, established pursuant to the federal Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296). The department shall develop the summary of state law and regulations.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.